

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VINCENT P. JIMENEZ,

Plaintiff,

v.

No. 11-cv-0707 WJ/SMV

**JEFFREY STONE,
KEVIN TODACHEENIE, and
CITY OF ALBUQUERQUE,**

Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL


THIS MATTER is before the Court on Plaintiff's motion for appointment of counsel [Doc. 89], filed December 11, 2014. In sum, the motion asks this Court to appoint counsel to represent Plaintiff before the Court of Appeals for the Tenth Circuit. The Court, being fully advised in the premises, finds that the motion is not well-taken and will therefore be DENIED.

Plaintiff initiated his pro se, civil rights complaint against Defendants on August 11, 2011. [Doc. 1]. The Court dismissed the action with prejudice on October 4, 2013, as a discovery sanction pursuant to Fed. R. Civ. P. 16(f), 37(b)(2)(A)(v), 41(b), and *Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir. 1992). [Doc. 78]. Plaintiff did not appeal the dismissal. However, more than one year after final judgment was entered, on October 6, 2014, Plaintiff filed a motion seeking relief under Fed. R. Civ. P. 60 for alleged fraud on the Court. [Doc. 79]. The Court denied the motion as untimely. [Doc. 82] (citing Fed. R. Civ. P. 60(c)(3)). Plaintiff now challenges the denial of his Rule 60 motion before the Court of Appeals, [Docs. 83], and requests that this Court appoint counsel to assist him, [Doc. 89].

Regardless of the reasons for Plaintiff's requests, the issue before this Court is the appropriateness of appointing counsel for a proceeding in another court. Although appointment of an attorney in a district court proceeding may properly continue on appeal, *see* 18 U.S.C.A. § 3006A(c), an initial appointment should be made by the court where a proceeding commences or is pending, *see Wilkins v. United States*, 441 U.S. 468, 470 (1979) (remanding and directing circuit court to appoint counsel for the defendant, if necessary, to pursue certiorari from adverse appellate ruling); *see also* 10th Cir. R. add. I. Here, Plaintiff should present to the Court of Appeals his request for appointed counsel. This Court will deny Plaintiff's motion.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's motion for appointment of counsel in the Court of Appeals [Doc. 89] is **DENIED**.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge